HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI C.V.NAGARJUNA REDDY

Writ Petition No.19717 of 2006

Between

A.Nageshwar Rao ..Petitioner

AND

Commissioner and Director of Municipal Administration and others ..Respondents

:: JUDGMENT ::

Counsel for the Petitioner: Sri Ch.Ravinder

Counsel for the respondents: Government Pleader for Municipal Administration
Sri P.Radhakrishna for respondent No.2
Sri A.Ydagiri Reddy for respondent No.3

29-11-2006

Per G.S.Singhvi, CJ

In this petition, the petitioner has prayed for issue of a mandamus to respondents 1 and 2 to remove the alleged

unauthorized construction made by respondent No.3 in premises bearing No.8-95, Goutham Nagar, Gaddi Annaram, Dilsukhnagar, Ranga Reddy District.

The petitioner claims to have purchased a small house in Goutham Nagar some time in 1978 and is residing in that house with his family. He has alleged that without getting the building plan sanctioned, respondent No.3 has raised construction on the premises adjacent to his house and despite repeated representations, the authorities of Gaddi Annaram Municipality have not taken action to stop the ongoing construction. Along with the writ petition, the petitioner has annexed copies of representations dated 25-3-2006 and 16-6-2006 and copy of notice dated 23-4-2006 sent by his advocate to the Commissioner of Gaddi Annaram Municipality for removing the alleged illegal construction raised by respondent No.3.

In the counter affidavit filed by Sri P.Sai Kumar, Commissioner, Gaddi Annaram Municipality, it has been averred that the entire construction of respondent No.3 is not unauthorised. According to him, the said respondent raised construction after obtaining permission from Gram Panchayat, Gaddi Annaram and now he has started construction of three rooms on the second floor on the rear portion (western side) leaving front side as open for having water tank over it. The deponent has further averred that the Municipality has already taken action to remove the construction made by respondent No.3 in violation of the sanctioned plan. For the sake of convenient reference, paragraphs 4 and 5 of the affidavit of Sri P.Sai Kumar are reproduced below:

"4) It is respectfully submitted that in reply to

paras (3) and (4) of the affidavit, I submit that it is not correct to state that the entire construction of the 3rd respondent i.e. H.No.8-95 is unauthorized one. It is clearly evident from the permission No.258/99 of the then Gram Panchayat, Gaddiannaram that the 3rd respondent constructed the building with Ground + 2 floors prior to formation of the Municipality i.e. during the Gram Panchayat period with the approval of the then Gram Panchatyat, Gaddiannaram. Now he has started the construction of only 3 rooms on the 2nd floor in the rear portion (western side) leaving front side as open for having the water tank over it. The original construction itself is with the load bearing walls. As such the 3rd respondent not provided the RCC columns/ pillars at the time of construction of existing Ground + 2 floors building and now also the 3rd respondent constructed the 3 rooms on the 2nd floor without RCC columns.

5) It is respectfully submitted that in reply to paras (5) and (6) of the affidavit, I submit that the contention of the petitioner that the 2nd respondent has not initiated any action on the unauthorized 3rd floor, is absolutely false and invented for the purpose of present writ petition. The 2nd respondent instructed the 3rd respondent to stop the construction work of 3rd floor on several times, since there is no written permission from the respondent Municipality as required under provision of A.P. Municipalities Act, 1965. But the 3rd respondent did not comply with the said instructions and proceeded with the construction of 3 rooms on the 2nd floor unauthorizedly. Finally the respondent Municipality issued a Provisional Order vide UCR No.4/TPS/2006, dated 26.8.2006 under Section 228 (1) & (2) of A.P. Municipalities Act, 1965, with a direction to stop the further construction work and to remove the so far made construction work forthwith. Further he was also directed to show cause within (7) days why the said provisional

order shall not be confirmed as required under Section 228 (2) of A.P. Municipalities Act, 1965. But the 2nd respondent neither removed the said unauthorized construction work nor replied in the matter. As such the said Provisional Order has been confirmed under section 228 (2) of A.P. Municipalities Act, 1965, vide Notice No.4/TPS/2006, dt.7.9.2006. Now it is binding on the 3rd respondent to cause effect to the instructions issued in the C.O. Notice and it is obligatory on the part of the 3rd respondent to remove the unauthorized 3rd floor. Thus the 2nd respondent initiated the action as per the provisions of A.P. Municipalities Act, 1965. The 3rd respondent instead of removing the entire 3rd flor (3 rooms), he has obeyed the 2nd respondent to some extent and removed the water tank made on the 3rd floor and installed a small Syntax Water Tank in the place of huge water tank and also given a reply stating that in order to construct a new raised water tank in the place of old non-usable one, raised walls for the tank and constructed small rooms below the water tank for utilizing them as store room and study room for the children. But on raising the objection by the petitioner, the water tank was removed as per the decision taken and compromise arrived before the Goutham Nagar Welfare Association in the meeting held on 11.6.2006 and erected a light weight water tank only. Finally, the 3rd respondent requested to drop the further proceedings in the matter."

Sri P.Radhakrishna, counsel for respondents 1 and 2 submitted that the constructions made by respondent No.3 in violation of the sanctioned plan have been partially removed. He pointed out that the Municipal Commissioner has already taken action under Section 228 (1) (2) of the Andhra Pradesh Municipalities Act, 1965 and execution of the final notice issued

under Section 228 (3) will be completed within a period of next three weeks.

In view of the statement made by Sri P.Radhakrishna, the writ petition is disposed of as infructuous. If respondent No.3 feels aggrieved by the action initiated by the Municipality, he shall be free to avail appropriate remedy.

As a sequel to disposal of the writ petition, W.P.M.P.No.24878 of 2006 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

29.11.2006.

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